

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MERCEDES GALLEGO,

Plaintiff,

-against-

THE STOP & SHOP SUPERMARKET
COMPANY LLC,

Defendant.

**PETITION FOR
REMOVAL**

**Jury Trial Demanded
ECF Case**

Docket No.:

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Defendant, THE STOP & SHOP SUPERMARKET COMPANY LLC (hereinafter “STOP & SHOP”), petitioners for the removal of this action from the Supreme Court of the State of New York, County of Queens, to the United States District Court, Eastern District of New York, respectfully shows this Honorable Court:

FIRST: On or about September 4, 2020, the Plaintiff commenced a civil action against the above-named Defendant in in the Supreme Court of the State of New York, County of Queens, entitled:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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MERCEDES GALLEGO,

Plaintiff,

-against-

THE STOP & SHOP SUPERMARKET
COMPANY LLC,

Defendant.

Index No.: 715047/2020

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A copy of the Summons and Complaint in this action is annexed hereto as ***Exhibit “A”*** and made a part hereof. On or about September 29, 2020, STOP & SHOP timely interposed its Answer, a copy of which is annexed hereto as ***Exhibit “B”***. On or about October 13, 2020, Plaintiff served her Verified Bill of Particulars and discovery responses on STOP & SHOP, which are annexed hereto collectively as ***Exhibit “C”***. Upon information and belief, the foregoing constitutes all process, pleadings and orders allegedly served upon the parties in this action.

SECOND: This is an action of civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the plaintiff and the defendant and the amount in controversy exceeds the sum of 75,000.00 exclusive of interests and costs. Accordingly, there exists jurisdiction in the District Court of the United States as provided in 28 U.S.C. §1332.

THIRD: Under the provision of 28 U.S.C. §1441, the right exists to remove this civil action from the Supreme Court of the State of New York, County of Queens to the United States District Court for Eastern District of New York, which embraces the place where this action is pending. In her complaint Plaintiff, MERCEDES GALLEGO, seeks judgment as a result of personal injuries allegedly sustained on February 24, 2020. The occurrence at issue herein took place on the premises commonly known and identified as 460 Franklin Avenue, Franklin Square, New York, more specifically the interior of said building used as a supermarket.

FOURTH: The action involves a controversy between citizens of different States. The Plaintiff is and was at the commencement of the action, a citizen of New York State, Queens County. The Defendant Stop & Shop Supermarket Company is a Foreign

Limited Liability Company with its sole member being Ahold Delhaize U.S.A., Inc., a Delaware Corporation with its principal place of business located at 1365 Hancock Street, Quincy, Massachusetts 02169.

FIFTH: Upon information and belief, Plaintiff's alleged amount in controversy will be claimed by the Plaintiff to exceed the \$75,000.00 threshold. Plaintiff's Complaint did not specify the amount of damages because under NY State CPLR Section 3017(c), a plaintiff in a personal injury matter in the Supreme Court of the State of New York is not permitted to assert the damages amount in the Complaint.

SIXTH: However, in Plaintiff's Discovery Responses, more specifically, Plaintiff's Verified Reply to CPLR 3017(c) Demand, Plaintiff claims damages in the amount of \$5,000,000.00 (Five Million Dollars). Further, in the Plaintiff's Bill of Particulars she asserts personal injuries and special damages which value could, if believed to have been caused by the subject accident, exceed the \$75,000.00 threshold. While all of the foregoing is expressly denied by the Defendant, based on the Plaintiff's CPLR 3017 (c) response and her allegations in the Bill of Particulars, the alleged amount in controversy is claimed to exceed \$75,000. Accordingly, there exists original jurisdiction in the District Courts of the United States as provided in 28 U.S.C. Section 1332.

SEVENTH: The instant Petition is being filed within thirty days of learning that the amount in controversy is claimed to exceed the Federal Court's jurisdictional limit in accordance with Fed. R. Civ. P. Section 1446(b). This action is also being removed within a year of commencement of the Action pursuant to Fed. R. Civ. P. Section 1446(b). No party to this action will be prejudiced by removing the Action.

EIGHTH: In accordance with the requirements of 28 U.S.C. Section 1446 Defendant attaches herewith and incorporates herein by reference copies of the following items served in this action:

- a. Plaintiff's Summons and Complaint against the Defendant for damages filed in the Supreme Court of the State of New York, County of Queens bearing Index Number 715047/2020 (*Exhibit "A"*)
- b. The Answer interposed on behalf of Defendant STOP & SHOP (*Exhibit "B"*).
- c. The Plaintiff's Bill of Particulars and Discovery Responses, including Plaintiff's Verified Reply to CPLR 3017 (c) Demand (*Exhibit "C"*).

NINTH: By reason of the forgoing, The Defendant desires and is entitled to have this action removed from the Supreme Court of the State of New York, County of Queens to the United States District Court for the Eastern District of New York, such being the District where this suit is pending.

TENTH: Concurrent with the filing of service and Petition for removal, Defendants are serving this Petition for removal upon the plaintiff's attorney, and filing a copy of this Petition for removal with the Clerk of the Court for the Supreme Court of the State of New York County of Queens.

WHEREFORE, Defendant, THE STOP & SHOP SUPERMARKET COMPANY LLC, prays that the above entitled action now pending against it in the Supreme Court of the State of New York, County of Queens be removed from that Court to the United States District Court for the Eastern District.

Dated: New York, New York
October 30, 2020

BY:



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